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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/609,120	06/27/2003	Wing Ming Keung	11187-00016	6701

27716 7590 10/03/2006

CV THERAPEUTICS, INC.  
3172 PORTER DRIVE  
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EXAMINER
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OWENS, AMELIA A

ART UNIT	PAPER NUMBER
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1625

DATE MAILED: 10/03/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/609,120

Applicant(s)

KEUNG ET AL.

Examiner

Amelia A. Owens

Art Unit

1625

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 7/18/2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 7-9, 12-16 and 26-30 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 7-9, 12-16 and 27-30 is/are allowed.
- 6) ☒ Claim(s) 26 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- ☐ Notice of Informal Patent Application
- ☐ Other: \_\_\_\_\_

### DETAILED ACTION

1. Claims 7-9,12-16,26-30 are pending.

#### *Claim Rejections - 35 USC § 112*

2. The rejection under 35 USC 112 is dropped as the claims have been amended and applicant's remarks are persuasive.

#### *Claim Rejections - 35 USC § 102*

3. The rejections of claims 27,28 under 35 USC 102(b) over Shao, Lei, Zhou, Tseng, Diedrich, USP 3907830 are dropped as the claims have been amended and applicants remarks are persuasive.
4. Claim 26 is rejected under 35 U.S.C. 102(b) as being anticipated by Shao that teach species RN 77316-82-6. Note R2/R4/R6/R7 are hydrogen; R1 is heterocyclcarbonyl (pyridylcarbonyl); R5 is methoxy (alkoxy).

#### *Claim Rejections - 35 USC § 103*

5. The rejection under 35 USC 103 over USP 3907830 and 4166862 is dropped as the claims have been amended and applicant's remarks are persuasive.
6. Claims 26 is rejected under 35 U.S.C. 103(a) as being unpatentable over USP 3907830 that generically teach compounds according to the invention as animal feed additives. See column 7 formula; column 8 lines 1-32. Note R2 is hydrogen; R3/R4 may be hydrogen; R1 may be unsubstituted benzyl. This corresponds to the claimed invention when R3 is hydrogen; R4 is hydrogen; R5 may be hydrogen, methoxy (alkoxy).

One of ordinary skill in the art would thus be motivated to prepare compounds from under the USP 830 genus in order to obtain additional beneficial feed agents. Also, one of ordinary skill in the art would be motivated to prepare compounds structurally similar to those of USP 830 in the expectation of obtaining a useful compound to add to animal feed as compounds structurally similar in structure are expected to have similar properties. The level of skill in the art is further reflected in *In re Lohr* 137 USPQ 548 at 549 (CCPA 1963), and in *In re Payne* 204 USPQ 249 at 254 (CCPA 1979).

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7. Claims 7-9,12-16,27-30 are allowed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Amelia A. Owens whose telephone number is 571-272-0690. The examiner can normally be reached on Monday - Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thomas C. McKenzie can be reached on 571-272-0670. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Amelia A. Owens  
Primary Examiner  
Art Unit 1625